

Office of the Monroe County Prosecuting Attorney
Response to the Commission on the Status of Women (CSW) Report
“A Review of the Community Response to Domestic Violence in Monroe County in 2009”

The CSW Report relies upon inaccurate data and flawed methodology. Many of these problems, such as the use of inaccurate jail booking data with multiple entries, were pointed out months prior to the publication of the report, but still relied upon in the final version. As such, the Commission published a report with knowledge that the data were inaccurate.

The CSW Report on domestic violence also included cases that were simply not domestic violence. Domestic violence is legally defined as a crime committed against an intimate partner (spouse, former spouse, living together as if married, child in common). A bar fight between people with no intimate partner relationship is not domestic violence. Yet, the CSW Report not only included such cases, but highlighted them as specific examples to illustrate concerns about how domestic violence cases were handled in 2009. This is misleading. Again, these inaccuracies were pointed out months prior to publication, yet the report continued to rely upon cases that were not even domestic violence.

Page 11 of the CSW Report lists several examples that supposedly illustrate “the downward trend in the number of charges” from arrest to filing to disposition. Each one of these specific examples relies upon inaccurate data.

Cause Number 53C02 0908 CM 02670

The CSW Report shows that this defendant was arrested for 5 counts of domestic battery and that the Prosecutor’s Office only filed one count of battery resulting in bodily injury (not domestic.) At the very least, one might initially question whether it is likely that a suspect would have 5 intimate partners. And indeed, the booking record relied upon by the Commission was inaccurate due to a data entry error by jail staff. The corrected booking record only indicated 1 count of domestic battery. The actual arresting officer put battery in their police report, not domestic battery. Thus in reality, not only were there never 5 counts of domestic battery, but there never was a domestic battery charge. The facts in the report did not meet the statutory definition for an intimate partner relationship. This inaccuracy was pointed out to the commission months prior to publication of their report. Not only did the final CSW Report continue to rely upon the flawed data, but it was highlighted as an example of the “downward trend” in domestic violence cases.

Cause Number 53C03 0907 CM 02521

The CSW Report shows that this defendant was arrested for 7 counts of domestic battery, and that the Prosecutor’s Office only filed 5 counts of battery (not domestic). The jail booking record in this case also suffered from the same type of clerical error. The corrected booking record indicated 5 counts of domestic battery. According to the actual police report filed by the arresting officer, the defendant was arrested for 5 counts of battery, but they were not domestic battery. This case involved a fight that took place

outside a bowling alley, and there was no intimate partner relationship between the victims and the defendant. Not only did the CSW Report overstate the number of counts, but wrongly included this as a domestic violence case when it was not. Again this “error” was pointed out to the CSW months prior to publication, yet the CSW Report continued to rely on the flawed data.

Cause Number 53C02 0907 FD 00557

The CSW Report shows that this defendant was arrested for 5 counts of strangulation, and that the Prosecutor’s Office only filed 1 count of strangulation – another example of the “downward trend.” The corrected booking record only shows 1 count of strangulation, as does the arresting officer’s report. Again this “error” was pointed out to the CSW months prior to publication, yet the CSW Report continued to rely on flawed data.

Cause Number 53C02 0905 FD 00436

The CSW Report shows that this defendant was arrested for 4 counts of strangulation, and that the Prosecutor’s Office only filed 1. The corrected booking record shows only 1 count of strangulation, as does the arresting officer’s report. Again this “error” was pointed out to the CSW months prior to publication, yet the CSW Report continued to rely on flawed data.

The CSW Report shows that there were 211 jail bookings for domestic battery in 2009. The Jail’s Cisco computer system shows that there were 137. The Cisco computer system numbers reflect the jail’s attempt to correct the clerical errors. These errors were brought to the attention of the CSW months prior to publication of the Report, and could have been corrected. (*See*, October 2012 Domestic Violence Task Force Minutes)

In addition to the obvious errors regarding the number of counts, these examples also illustrate that booking records are not a reliable source of raw data. Booking records are not intended to contain a complete and accurate list of available criminal charges, but rather to list a legal basis for the jail to hold an arrested individual. That is not to say that booking records have no value to researchers. However, they cannot be relied upon in the way the CSW Report uses them. The Prosecutor’s Office does not rely on booking records for anything other than a record of who is in the jail. They are not used for charging decisions. The valid source document, and the document upon which actual charging decisions are based, is the narrative police report prepared by the arresting officer in the case. That is the document reviewed by the Prosecutor’s Office for a charging decision. Those reports are the property of the police agency that generated them, and are available from those agencies.

Since 2007, the Prosecutor’s Office has provided a monthly spreadsheet with information about every domestic violence case filed by our office. Data is provided directly to the Domestic Violence Task Force. That spreadsheet contains detailed information, including the name of the defendant, charges, cause number, disposition, and sentencing notes. The Prosecutor’s Office even provides the names of individuals arrested for a domestic violence related offense, and in whose cases the Prosecutor’s

Office does not subsequently file criminal charges. We are not aware of any other Prosecutor's Office that provides this level of public transparency regarding the handling of domestic violence cases. The issue is not access to the information.

The CSW Report relies upon the data provided by the Prosecutor's Office, and also includes certain offenses which they consider to be domestic based upon the name of the offense. The problem is that what makes a charge domestic violence is not the name of the offense, but the intimate partner relationship of the parties. Certain offenses such as Intimidation, Harassment, Criminal Mischief, Invasion of Privacy, Strangulation, and Stalking are often domestic, but may also be non-domestic (no intimate partner relationship.)

Apart from "domestic battery," which includes the intimate partner relationship as an element of the offense, the Prosecutor's Office handles Intimidation, Harassment, Criminal Mischief, Invasion of Privacy, Strangulation, and Stalking cases that are not between intimate partners, and that are not domestic violence. These cases are not handled by the domestic violence deputy prosecutor, but rather are handled by other deputies throughout the office. Where there is no intimate partner relationship between the victim and the defendant, the case is not domestic violence. This cannot be determined solely from the name of the charge, but only from reviewing the narrative police report by the arresting officer.

The CSW Report contains a detailed description of the methodology, and graphs listing conclusions. But apart from the few specific examples cited to illustrate various points, the Report does not contain the actual data relied upon. If the CSW would publicly release the names of the defendants whose cases it relied upon to generate its conclusions, it would be a simple matter to review the files and determine how many are truly domestic violence cases, and how many are not. In addition, our office has always offered to provide an explanation for cases that appear to be domestic in the jail booking records, and in which we do not handle as domestic violence cases. There is no need to rely upon a flawed methodology, the actual facts could be determined. As it stands, the examples cited on page 11 demonstrate that CSW Report is currently attempting to raise concerns about how domestic violence cases were handled, while including specific examples that were not domestic violence cases.

In several critical respects the CSW Report uses the term "case" when it is in fact referring to a criminal "count." In the criminal justice system as a whole, the term "case" is synonymous with "cause of action." Each cause of action, or case, is assigned its own identifying number called a cause number. A criminal case against a defendant is commenced when the prosecutor files a "criminal information" with the court.

A criminal "count" is a specific allegation of crime in a criminal information. Prosecutors can, and frequently do, file multiple charges or "counts" against a single criminal defendant in a single criminal information or case. By rule those separate charges must be listed individually and in succession. These are not separate cases.

They are all part of the same case against a particular criminal defendant, and typically stem from the same incident.

The CSW Report's reliance on counts rather than cases creates a misleading impression about the conviction rates expressed in the report. For instance, in a drunk driving case the Prosecutor's Office typically files two counts: Operating While Intoxicated and Operating with a Blood Alcohol Content higher than the legal limit. These counts merge for sentencing purposes, such that the defendant could only be sentenced for one of the two counts, even if convicted of both. The vast majority of these cases are resolved by a plea agreement whereby the defendant pleads guilty to one count and the other is dismissed. The defendant is convicted of a crime and sentenced. Even though 99% of the defendants may be convicted and sentenced in the case, the conviction rate per count may only be 50%. An exclusive focus on counts creates the impression that the "conviction rate" is only 50%.

The CSW Report indicates that the "conviction rate" for felony Domestic Battery charges filed by the Prosecutor's Office in 2009 was 40%. Yet, a review of the felony Domestic Battery cases filed by our office indicates that 82% of the defendants were convicted of a criminal offense. Similarly, the CSW Report indicates that 83% of the Strangulation charges were dropped through plea negotiations. Yet, out of 25 felony Strangulation cases, 84% of the defendants were convicted of a criminal offense, 52% of a felony.

In handling domestic violence, the Prosecutor's Office maintains an "interventionary filing policy" to protect victim safety, provide rehabilitation services to perpetrators, and provide a meaningful response that will encourage victims to come forward and report. Domestic Violence cases require specific policies based on a clear understanding of the "cycle of violence." In every case, our office attempts to obtain the most favorable outcome possible given the evidence. It is easy to have a 100% conviction rate if one cherry picks the best cases and doesn't file the ones in which the evidence is marginal. But that approach does not serve victim safety. On the other hand, an interventionary filing policy means that our office may file a case where the evidence is marginal in order to achieve a successful intervention for the victim. The reason that our office may later reduce or dismiss an individual count in a plea agreement is to obtain a criminal conviction to another count or some other favorable result based on the available evidence – achieving an outcome that protects victim safety, holds the perpetrator accountable, and provides a meaningful response. Our philosophy for prosecuting domestic violence cases is explained further on our website at www.monroeprosecutor.us. While there may be honest differences of opinion about policy in handling domestic violence cases, we strive to base our approach on recognized best practices. Relevant articles upon which we base our approach are also on the website, including from the American Prosecutors Research Institute, the National District Attorneys Association, and the Department of Justice. Follow the links to Prevention and Education/Domestic Violence/Resources. <http://www.monroeprosecutor.us/prevention-education/domestic-violence/resources/>

The Prosecutor's Office handled 232 domestic violence cases in 2009. The spreadsheet showing the data for each individual case is publicly available on the website. An explanation and graphs showing the various outcomes is also available on the website. In 2009, 77.5% of defendants in domestic violence cases were convicted. The inclusion of other favorable outcomes that held the defendant accountable and achieved a successful intervention for the victim increases the percentage to 88.7%. The number of outright dismissals was 11.2%.

In December of 2012, the Prosecutor's Office invited a group of stakeholders to participate in a Study Committee about the community response to domestic violence. The purpose of the Study Committee was to comprehensively examine the current community response to domestic violence, including the initial response by law enforcement, through charging policies and disposition of cases filed in the criminal justice system, and through sentencing and probation. This Study Committee is also examining the response of other stakeholders, and the current state of prevention and education efforts in the community.

The Study Committee has been meeting monthly since December of 2012. The power point presented by the Prosecutor's Office to the Study Committee that explains our policies is also available at the website. Our office remains committed to an honest and productive dialogue among the stakeholders about policies for improving the community response to domestic violence.